

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CYBERCREEK ENTERTAINMENT, LLC,

Plaintiff,

vs.

NOTICE OF REMOVAL

U.S. UNDERWRITERS INSURANCE COMPANY,

Defendant.

PLEASE TAKE NOTICE, that pursuant to 28 U.S.C. §1441, defendant U.S. Underwriters Insurance Company, by its attorneys, Goldberg Segalla LLP, hereby removes this action to this Court from the Supreme Court of the State of New York, County of Erie. In support thereof, defendant states as follows:

1. Plaintiff filed its Summons and Complaint in the Supreme Court of the State of New York, County of Erie on March 10, 2016. A copy of the Summons and Complaint is annexed as Exhibit A.
2. By letter dated April 28, 2016, counsel for defendant was served with the Complaint and admitted service on May 9, 2016. A copy of the Admission of Service is annexed as Exhibit B.
3. In the Complaint, plaintiff asserts that it is a New York limited liability company. Upon information and belief, all of its members are residents of the State of New York, and thus is a citizen of the State of New York within the meaning of 28 U.S.C. §1332(c).
4. The Complaint alleges that defendant is a foreign company organized and existing in the Commonwealth of Pennsylvania. However, this is incorrect, as defendant, U.S.

Underwriters Insurance Company, is a stock insurance company currently existing under the laws of the State of North Dakota, with its principal place of business in the Commonwealth of Pennsylvania. Thus, defendant is a citizen of Pennsylvania and North Dakota within the meaning of 28 U.S.C. §1332(c).

5. In the Complaint, plaintiff asserts that the commercial property portion of the policy provides for building coverage of \$900,000 and business property coverage of \$150,000. Plaintiff alleges damages in the amount of \$800,000, and has previously presented a claim of damages in the amount of \$540,316.62. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §1332, in that it is a civil action between citizens of different states, and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

6. Venue is proper in this district pursuant to 28 U.S.C. §1441(a) as this is the District Court of the United States for the district and division embracing the place where the State Court action is pending.

7. This Notice of Removal is timely filed pursuant to 28 U.S.C. §1446(b) as it is filed within 30 days of service of the summons. Defendant hereby certifies that a copy of this Notice of Removal is being served upon plaintiff, by and through its attorney of record, and Notice of this removal is being filed with the Clerk of the Supreme Court of the State of New York, County of Erie.

8. An index of each document filed and/or served in the State Court action, is attached hereto as Exhibit C.

WHEREFORE, defendant files this Notice of Removal so that the State Court action under Index Number 802510/2016 now pending in the Supreme Court of the State of New York, County of Erie be removed to this Court for all further proceedings.

DATED: Buffalo, New York
May 27, 2016

GOLDBERG SEGALLA LLP

s/ Jonathan Schapp

By: _____

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